

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

120041

FILE: B-206654**DATE:** December 6, 1982**MATTER OF:** Edward J. Schlachter

DIGEST: Employee of the Drug Enforcement Agency is not entitled to reimbursement for travel expenses incurred by his dependents in assuming residence with him because they were not members of his household when he reported for duty at his overseas station. The fact that he is entitled to certain overseas allowances because his children are living with him does not provide a basis for paying transportation costs for their travel to the overseas station.

This action concerns the settlement of our Claims Group, dated February 1, 1980, which disallowed Mr. Edward J. Schlachter's claim for reimbursement of the travel expenses of his dependent daughter, incurred when she traveled to Bangkok, Thailand, to assume residence with him there at his duty station. The settlement of the Claims Group is sustained since at the time Mr. Schlachter reported for duty at Bangkok, his children were residing with his former wife under her sole custody and, therefore, were not members of his household.

The questions presented in this case were referred to this Office as an appeal by the employing agency. They were raised in the form of a grievance forwarded by Mr. Schlachter to the agency, in which he protests the denial of his claim. In his grievance he also complains of various agency actions, regulations and procedures, and alleges inequitable treatment on the part of the agency. We will consider only those questions and issues that pertain to the denial of payment by this Office. We will not address the other matters of which the employee complains since they are not within our jurisdiction.

Mr. Schlachter is an employee of the Drug Enforcement Administration, Department of Justice. He was transferred to Bangkok in September 1978. When his travel orders were initially issued on July 11, 1978, they authorized transportation for his dependent

children, Suzanne and Lori. Prior to his departure, however, Mr. Schlachter was informed by the agency that his children's travel was not authorized because they were not members of his household. On August 3, 1978, an amendment to his travel orders was issued "to delete present entitlement to the dependent daughters as they do not reside with the employee."

Mr. Schlachter indicated that his children might later assume residence with him in Bangkok as he and his ex-wife had tentatively planned. He asked if the agency would amend his travel orders to authorize payment of the children's travel expenses to his overseas post and authorize payment of appropriate educational and quarters allowances in case his children did join him. In response to his request, the agency controller's office informed him that he would be entitled to the allowances only if his divorce decree granted him custody or joint custody of his children.

In February 1979, Mr. Schlachter's divorce decree was modified to grant him joint custody of his children, and his daughter Suzanne traveled to Bangkok to assume residence with him in July 1979.

It appears that Mr. Schlachter was paid the appropriate education and quarters allowances. However, the agency denied payment for the children's transportation expenses under 5 U.S.C. 5724. This statute, which is implemented by chapter 2 of the Federal Travel Regulations, provides in relevant part for payment of the transportation expenses of the immediate family of an employee who is transferred in the interest of the Government from one official station to another for permanent duty. Under paragraph 2-1.4d of the Federal Travel Regulations (May 1973), in effect at the time of Suzanne Schlachter's travel, the definition of "immediate family" included children and other named "members of the employee's household at the time he reports for duty at his new permanent duty station or performs authorized or approved overseas tour renewal agreement or separation travel * * *." The employing agency and our Claims Group determined that since Mr. Schlachter's daughter, Suzanne, resided with her mother at the time he reported for duty in

B-206654

Bangkok, she was not at that time a member of his household. Based on that determination both concluded that he was not entitled to reimbursement of the expenses she incurred in traveling to Bangkok to reside with him.

In submitting his grievance of May 12, 1981, Mr. Schlachter contends that the agency's inclusion of Suzanne and Lori on his initial travel orders and other actions of the agency anticipatory of their traveling with him led him to believe he was entitled to reimbursement for their travel. He also states that when his travel orders were amended to exclude the children's names, he was told their names would be placed on amended orders when they initiated travel to join him. Also included in his grievance is a claim for transportation expenses incurred by his daughter Lori, who traveled to Bangkok to reside with him in August 1980.

In response to Mr. Schlachter's requests for reimbursement of the children's transportation expenses and payment of overseas allowances if and when they should join him, correspondence from the agency controller's office refers only to the possibility of his entitlement to an education allowance and a "with family rate" quarters allowance in the event he should obtain full or joint custody. Additionally, in the claim the employee first filed in this Office, he stated that the agency controller's office advised him concerning his eligibility for "appropriate dependent allowances." Thus, after agency officials learned that Mr. Schlachter's children were not members of his household, there is no evidence of record that the agency misinformed him concerning his ineligibility for his children's transportation expenses to Bangkok. Moreover, it is a well-settled rule of law that the Government cannot be bound by erroneous advice of its agents. Matter of Elder and Owen, 56 Comp. Gen. 85, 89 (1976), and Matter of Pradarits, 56 Comp. Gen. 131, 136 (1976).

The fact that Mr. Schlachter's efforts to obtain joint custody of his daughter did not affect his entitlement to reimbursement for their initial transportation but enabled him to receive an education allowance and

a "with family rate" quarters allowance has given rise to his objection that he is subject to conflicting regulations. The various allowances and entitlements in issue are in fact governed by different regulations. Under the provisions of 5 U.S.C. 5923 and 5924, an employee may be granted a quarters allowance and certain cost-of-living allowances when serving in a foreign area. The provisions of this statute are implemented by the Standardized Regulations (Government Civilians, Foreign Areas) issued by the Department of State. Under these regulations an employee may be paid an allowance for the education of his dependents and he may receive a quarters allowance at the "with family" rate when his children reside with him at the foreign post. Reimbursement for transportation expenses of an employee and his immediate family incident to transfer is authorized by 5 U.S.C. 5724. This and related statutes are implemented by the Federal Travel Regulations issued by the General Services Administration. The two sets of regulations deal with different entitlements that serve distinct purposes.

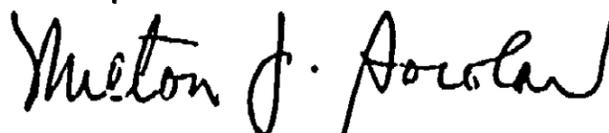
The authority for overseas travel of Foreign Service employees and members of their families is contained in 22 U.S.C. 1131, implemented by Uniform State/AID/USIA Foreign Service Travel Regulations contained in Volume 6, chapter 100, of the Foreign Affairs Manual. Under that statute and regulation, employees of the Foreign Service are entitled to payment for transportation of family members to the foreign post, provided that the dependents travel there to reside with the employee. However, that rule is only applicable to employees traveling under the Foreign Service Travel Regulations.

Under the Federal Travel Regulations entitlement to transportation for an employee's family covers only those family members who were members of the employee's household at the time he reported for duty at the new duty station. In Matter of Gionotti, 59 Comp. Gen. 450 (1980) and 44 Comp. Gen. 443 (1965) we addressed the question of payment of dependent transportation expenses under 5 U.S.C. 5724. While the travel expenses of the employee's children were allowed in those cases, each is distinguishable from Mr. Schlachter's case in that the children were members of the employee's household at the time he traveled to his duty station. These

B-206654

decisions do not provide authority for paying Mr. Schlachter's claim because when he traveled to his overseas duty station his children were in the custody of their mother and, therefore, were not members of his household.

Payment of the transportation expenses and payment of cost-of-living allowances to which Mr. Schlachter is entitled are governed by separate regulations. He complied with the requirements for payment of educational and quarters allowances and was paid accordingly. Payment of his children's transportation expenses, being subject to the Federal Travel Regulations, not the Foreign Service Travel Regulations, required not only custody but that his children be members of his household at the time he reported for duty. Since Mr. Schlachter's children were not members of his household at the time he reported for duty in Bangkok, he is not entitled to reimbursement for their transportation to that place incident to his initial assignment. Accordingly, the determination of the Claims Group is sustained.

for 
Comptroller General
of the United States